



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants' agent acknowledged receipt of evidence submitted by the landlords. The tenants' agent did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to the return of all or a portion of the security and pet deposit?
Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or the tenancy agreement?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's agent's testimony is as follows. The tenancy began on May 1, 2011 and ended on May 1, 2017. The tenants were obligated to pay \$2650.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1325.00 security deposit and a \$1325.00 pet deposit. The agent testified that a written condition inspection report was not conducted at move in or moves out. The agent testified that the landlord didn't return the security or pet deposit. The agent testified that the landlord raised the rent without following the proper process as required by the Act. The agent testified that they overpaid "about 500 bucks".

The landlords gave the following testimony. The landlords questioned why the tenants' father, who was a former tenant on the lease along with the subject tenants, filed the application on the tenants' behalf as he no longer had any interest in this tenancy. The landlords testified that he requested to have his name removed from the lease in February 2017. JB testified that the tenants broke the lease and left the unit dirty and damaged. JB testified that the unit was brand new when the tenants moved in. GA testified that he asked tenant – DK to do a written condition inspection report at move in but DK refused as he advised the landlord it wasn't necessary since the place was new and shook GA's hand.

GA and JB both confirmed that offer was made at move in and again at move out. GA testified that he advised DK that there was damage in the unit and that he wanted to walk through it with him but was advised by DK to "stop crying, you have the deposits". GA testified that he showed up at the unit and tried to physically have DK walk through the unit with him but DK advised he "was late and had to go". The landlords testified that the damage and loss far exceeded the deposits. GA testified that DK had changed the locks and alarm code and that he was unable to access the property. GA testified that the tenant over held the unit until May 8, 2017 but just wanted to get his unit back and thought the matter was over based on the issue of the deposits being settled between him and DK. GA and JB testified that the issue of the deposits was dealt with by DK and they question why the agent – PE, is now attempting to get them.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of the security and pet deposit. Both parties agreed that the deposits presently being held by the landlord is \$2650.00 however the tenants have requested \$5894.65 in deposits. The agent was unable to explain this or provide how he came to this calculation. It is worth noting, that the agent gave varying and contradictory evidence throughout the hearing. When questioned about a specific point, he would offer one version, then vary some of the details and then offer another version. I found the agents testimony to be suspect and unreliable.

I must first address the issue of the move in condition inspection. Section 24 of the Act addresses it as follows.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

The agent did not dispute the landlords claim that the unit was brand new nor did he dispute that he wasn't there. The agent was unable to provide any testimony as to what transpired on the move in or move out date. The landlords gave clear, concise and credible testimony. I accept the testimony of both landlords and find that the tenant did not wish to participate in a move in condition inspection or move out and therefore extinguished their right to make a claim for the deposit; accordingly, I dismiss this portion of the application.

The agent was seeking "about 500 bucks" in overpayment of rent as a result of what he called an illegal rent increase. The tenants' application states that they were seeking \$485.20 in this regard. As noted above, the agents' testimony was not compelling and at times illogical. The agent testified that he had all the paperwork to prove this entire claim; however he did not submit it for today's hearing. Based on the insufficient evidence before me, I dismiss this portion of the application. The tenants have not been successful in this application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply. The landlords are entitled to retain the security and pet deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 19, 2018

Residential Tenancy Branch